

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 2001-02

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-037-1

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

Secretary of State
Filing Data

**For Filing Administrative
Regulations**

For Emergency
Regulations Only

Effective Date

Expiration Date

Governor's Signature

State Environmental Commission

Classification ☐ Proposed ☐ Adopted By Agency ☒ Temporary ☐ Emergency ☐

Brief description of action: **Petition 2001-02 (LCB R-037-01)** permanently amends NAC 444.842 to 444.960, the hazardous waste regulations. The amended regulations update the State's adoption of federal regulations by reference by amending NAC 444.8427, 444.84275, 444.850 and 444.9452 to refer to the federal regulations as they existed on July 1, 2001 and modify 444.8632 to adopt 40 CFR Parts 2, Subpart A, 124, Subparts A and B, Parts 260 to 270 and Part 279 as those parts existed on July 1, 2001.

Authority citation other than 233B: NRS 459.485, 459.490 and 459.500

Notice date: November 3, November 9 and November 14, 2000 (Temporary) August 20, August 29 and September 6, 2001 (Permanent)

Hearing date: December 5, 2000 (Temporary); September 18, 2001 (Permanent)

Date of Adoption of Agency: December 5, 2000 (Temporary); September 18, 2001 (Permanent)

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PETITION 2001-02 LCB File R-037-01
STATE ENVIRONMENTAL COMMISSION**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 444. This permanent regulation deals with amendments to the hazardous waste program.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 2001-02 (LCB File R-037-01), was noticed three (3) times: November 3, November 9 and , November 14, 2000 as a temporary regulation and August 20, August 29 and September 6, 2001 as a permanent regulation in the Las Vegas Review Journal and the Reno Gazette-Journal newspapers. A report was prepared that summarized the public meetings. Workshops were held on September 26, 2000 in Las Vegas and September 27, 2000 in Carson City. Additional workshops was held on August 8, 2001 in Las Vegas and August 9, 2001 in Carson City. The temporary regulation was adopted by the State Environmental Commission on December 5, 2000 and the permanent regulation on September 6, 2001. No oral or written comments opposing or supporting the regulation were received by the Commission for the temporary and permanent regulation. The public was also mailed the notice of intent and agenda through the Environmental Commission's mailing list. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-4670 extension 3118, or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

2. The number persons who:

(a)	Attended each hearing;	35
(b)	Testified at each hearing:	0
(c)	Submitted to the agency written comments:	0

3. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. See above statement for dates of the public notices and public workshops. No oral or written testimony was received that opposed or supported the regulation for both the temporary regulation. A written comment was received from the Nevada Mining Association (exhibit #3) supporting the permanent adoption. No oral comments supporting or opposing the regulation were received a permanent adoption. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-4670 or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted by the State Environmental Commission on September 18, 2001 without any request for amendments.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Estimated economic effect of the regulation on the business which it is to regulate;

There will be no adverse economic impact upon the regulated business community. This regulation will make it easier for affected businesses to comply by simplification of the regulation.

(b) Estimated economic effect on the public;

The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The regulations do not overlap or duplicate any regulations of another state or local governmental agency.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

This regulation is no more restrictive or stringent than the federal requirements. This regulation adopts by reference 40 CFR Parts 2, Subpart A, 124, Subparts A and B, Parts 260 to 270 and Part 279.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This permanent regulation does not provide a new fee and it does not amend existing fees..

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FILED PERMANENT REGULATION OF THE NEVADA STATE ENVIRONMENTAL COMMISSION

LCB File No. R037-01

Effective October 25, 2001

Explanation - Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

Authority: §§1-6, NRS 459.485, 459.490 and 459.500

Section 1. NAC 444.8427 is hereby amended to read as follows:

444.8427 "Facility for community recycling" means a facility for recycling hazardous waste which has a yearly capacity that is not more than twice the amount of the type of hazardous waste proposed to be recycled that is generated within the region in this state in which the facility is or is proposed to be located, as determined by the generation rate contained in the biennial report required by the provisions of 40 C.F.R. § 262.41, as that section existed on July ~~{6, 1999.}~~ *1, 2001*.

Sec. 2. NAC 444.84275 is hereby amended to read as follows:

444.84275 "Facility for community storage" means a facility for the storage and consolidation of hazardous waste which has a yearly capacity that is not more than twice the amount of hazardous waste that is generated within the county in which the facility is or is proposed to be located, as determined by the generation rate contained in the biennial report required by the provisions of 40 C.F.R. § 262.41, as that section existed on July ~~{6, 1999.}~~ *1, 2001*.

Sec. 3. NAC 444.850 is hereby amended to read as follows:

444.850 As used in NAC 444.850 to 444.8746, inclusive, unless the context otherwise requires:

1. The words and terms defined in NAC 444.8505 to 444.861, inclusive, have the meanings ascribed to them in those sections.
2. Except for the words and terms otherwise defined in NAC 444.8505 to 444.861, inclusive, the words and terms defined in 40 C.F.R. § 260.10, as that section existed on July ~~{6, 1999.}~~ *1, 2001*, have the meanings ascribed to them in that section.

Sec. 4. NAC 444.8632 is hereby amended to read as follows:

444.8632 1. In addition to the requirements of NAC 444.850 to 444.8746, inclusive, a person who generates, transports, treats, stores, disposes or otherwise manages hazardous waste or used oil shall comply with all applicable requirements of, and may rely upon applicable exclusions or exemptions under 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, and Part 273 and Part 279, as those provisions existed on July ~~{6, 1999.}~~ *1, 2001*, which, except as otherwise modified by NAC 444.86325, 444.8633 and 444.8634, are hereby adopted by reference. The ~~{state environmental}~~ commission may use federal statutes and regulations that are cited in 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, Part 273 and Part 279, to interpret these sections and parts.

2. The volumes containing these parts may be obtained from the Superintendent of Documents, P.O. Box 371954,

Pittsburgh, Pennsylvania ~~15250,~~ 15250-7954, for the following prices:

(a) Volume 40 C.F.R. Part 2.....	333 337
(b) Volume 40 C.F.R. Part 124	53 66
(c) Volume 40 C.F.R. Parts 260 to 265, inclusive.....	32 36
(d) Volume 40 C.F.R. Parts 266 to 299, inclusive	33 35

Sec. 5. NAC 444.86325 is hereby amended to read as follows:

444.86325 1. The following sections and parts of Title 40 of the Code of Federal Regulations, and any reference to these sections and parts, are not adopted by reference:

- (a) Sections 2.106(b) and 2.110;
- (b) Sections 124.1(b)-(e), 124.4, 124.5(e), 124.9, 124.10(a)(1)(iv), ~~124.12(e), 124.14(d),~~ 124.15(b)(2), 124.16, 124.17(b), 124.18, 124.19 and 124.21;
- (c) Sections 260.1(b)(4)-(6) and 260.20, 260.21 and 260.22;
- (d) Section 261.5(j);
- (e) Part 262, Subpart H;
- (f) Sections 264.1(d), 264.1(f), 264.149, 264.150, 264.301(1), 265.1(c)(4), 265.149, 265.150 and 265.430;
- (g) Section 266.111;
- (h) Sections 268.5 and 268.6, Part 268, Subpart B, and sections 268.42(b) and 268.44;
- (i) Sections 270.1(c)(1)(i), 270.60(b) and 270.64; and
- (j) Sections 279.10(b)(2), 279.10(b)(3), 279.10(c), 279.10(d)(1), 279.42(b)(2), 279.51(b)(2), 279.62(b)(2) and 279.73(b)(2).

2. The following parts and sections of Title 40 of the Code of Federal Regulations are adopted by reference, as revised in this subsection:

(a) Part 124 is adopted with the following exceptions:

- (1) Delete all references to appeal to the Administrator in section 124.5(b);
- (2) Delete all references to “EPA-issued permits” and insert in its place “permits issued by the department,” except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi);
- (3) Delete all references to “when EPA is the permitting issuing authority” and insert in its place “when the department is authorized to issue a permit,” except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi);
- (4) Subpart A is adopted solely for the purpose of establishing procedures for permits for the management of hazardous waste, except that all references to “UIC,” “PSD” and “NPDES” are deleted;
- (5) Delete all references to “RCRA part B,” “part B RCRA” and “part B” and insert in their place “NRS 459.400 to 459.600, inclusive,” in sections 124.31 and 124.32; and
- (6) Delete from sections 124.31(a), 124.32(a) and 124.33(a) the following sentence: “For the purposes of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 C.F.R. part 271.”

(b) Section 260.2(a) is adopted except that “the Freedom of Information Act, 5 U.S.C. section 522, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and section 3007(b)” must be replaced with “NRS 459.555 and any regulations adopted pursuant thereto.”

(c) Section 260.33(b) is adopted except that “in the locality where the recycler is located” is deleted.

(d) Section 260.41(a) is adopted except that “or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal” is deleted.

(e) *Section 261.2(c)(3) is adopted except that “(except as provided under 40 C.F.R. 261.4(a)(17))”is deleted from the second sentence.*

(f) Section 261.4(e)(3)(iii) is adopted except that “in the Region where the sample is collected” is deleted.
~~{(f)}~~ (g) Section 262.11(c)(1) is adopted except that “,or according to an equivalent method approved by the Administrator under 40 C.F.R. Part 260.21” is deleted.

~~{(g)}~~ (h) Sections 262.42(a)(2) and 262.42(b) are adopted except that “for the Region in which the generator is located” is deleted.

~~{(h)}~~ (i) Sections 264.18(c) and 265.18 are adopted except that “except for the Department of Energy Waste Isolation Pilot Project in New Mexico” is deleted.

~~{(i)}~~ (j) Sections 264.143(h), 264.145(h), 265.143(g) and 265.145(g) are adopted except that “If the facilities covered by the mechanisms are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions” is deleted.

~~{(j)}~~ (k) Sections 264.147(a)(1)(i), 264.147(b)(1)(i) and 265.147(a)(1)(i) are adopted except that “or Regional Administrators if the facilities are located in more than one Region” is deleted.

~~{(k)}~~ (l) Section 264.151 is adopted with the following exceptions:

- (1) Delete all references to “(of/for) the Regions in which the facilities are located”; and
- (2) Delete “an agency of the United States Government” from the second paragraph of the trust agreement.

~~{(l)}~~ (m) Part 270 is adopted except that all references to “interim authorization” are deleted.

~~{(m)}~~ (n) Section 279.40(c) is adopted except that “unless, under the provisions of §279.10(b), the hazardous waste/used oil mixture is determined not to be hazardous waste” is deleted.

Sec. 6. NAC 444.9452 is hereby amended to read as follows:

444.9452 1. All sections, subparts and parts of Title 40 of the Code of Federal Regulations referred to in NAC 444.940 to 444.9555, inclusive, as modified by NAC 444.9453, are hereby adopted by reference as they existed on July ~~{6,1999.}~~ **1, 2001.**

2. The volumes containing these sections, subparts and parts may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania ~~{15250.}~~ **15250-7954**, for the following prices:

- (a) The volume containing 40 C.F.R. Parts 260 to 265, inclusive.....~~{\$32}~~ **\$36**
- (b) The volume containing 40 C.F.R. Parts 266 to 299, inclusive.....~~{33}~~ **35**
- (c) The volume containing 40 C.F.R. Part 761~~{42}~~ **46**

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